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HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 710 of 2017**

Shobharam Dehariya S/o Shri Thansingh Dehariya, aged about 33 years, working as Assistant Professor in Social Work (MSW) on contract, Bastar University, Jagdalpur, R/o C/o Shri N. L. Yadav, near Nirmal Sadan, Dharampura No.1, Jagdalpur, District Bastar, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through Principal Secretary, Department of Higher Education, Mantralaya, Mahanadi Bhawan, Naya Raipur (CG)
2. Bastar Vishwavidyalaya, through its Registrar, Bastar Vishwavidyalaya, Dharampura, Jagdalpur (CG)
3. Chancellor, Bastar Vishwavidyalaya, Rajbhavan, Raipur (CG)
4. Vice Chancellor, Bastar Vishwavidyalaya, Dharampura, Jagdalpur, (CG)
5. Registrar, Bastar Vishwavidyalaya, Dharampura, Jagdalpur, (CG)
6. Executive Council, Bastar Vishwavidyalaya, through its Secretary, Bastar Vishwavidyalaya, Dharampura, Jagdalpur, (CG)

---- Respondents

For Petitioner	:	Shri H. S. Patel on behalf of Shri Anand Dadariya, Advocate
For Respondent/State	:	Shri Majid Ali, Dy. Govt. Advocate
For Respondents 2 to 6	:	Shri Neeraj Choubey, Advocate

Writ Petition (S) No. 699 of 2017

Dr. Tripti Arjariya D/o Shri Ram Kishore Arjariya, aged about 35 years, resident of 373/3, Sarvadharam, B-Sector, Kolar Road, Bhopal, Madhya Pradesh

---- Petitioner**Versus**

1. State of Chhattisgarh through Principal Secretary, Department of Higher Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Bastar Vishwavidyalaya, through its Registrar, Bastar Vishwavidyalaya, Dharampura, Jagdalpur, Chhattisgarh
3. Chancellor, Bastar Vishwavidyalaya, Governor House, Raipur, Chhattisgarh,
4. Vice Chancellor, Bastar Vishwavidyalaya, Dharampura, Jagdalpur, Chhattisgarh
5. Registrar, Bastar Vishwavidyalaya, Dharampura, Jagdalpur, Chhattisgarh
6. Executive Council, Bastar Vishwavidyalaya, through its Secretary, Bastar Vishwavidyalaya, Dharampura, Jagdalpur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Amrito Das, Advocate
For Respondent/State	:	Shri Majid Ali, Dy. Govt. Advocate
For Respondents 2 to 6	:	Shri Neeraj Choubey, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

20/06/2018

These are two writ petitions filed by the petitioners challenging the notification dated 13.01.2017 by which the respondents have cancelled the recruitment process initiated vide advertisement dated 28.05.2013.

2. The brief facts leading to the filing of the present petitions are that the respondent University had issued an advertisement on 28.05.2013 for filling up various posts in Bastar Vishwavidyalaya, Jagdalpur. The two petitioners herein had applied for the post of Assistant Professor in computer application and social work respectively. The credentials of petitioners were thoroughly scrutinized and they were called for interview in which the

petitioners were found to be meritorious. The Selection Committee recommended the name of petitioners for appointment on the post of Assistant Professor in computer application and social work respectively. The recommendation of Selection Committee was also placed before the Executive Council which is the supreme administrative decision taking body. The Executive Council also approved the select list in the meeting held on 27.04.2016. The matter was again placed and got ratified before the subsequent Executive Council meeting on 02.05.2016 yet no order of appointment was passed in favour of the petitioners.

3. The petitioners, in between, filed separate writ petitions i.e. WPS Nos. 2496/2016 & 3897/2016 seeking for a direction to notify the result of the Executive Council meeting and for issuance of the order of appointment. However, pending both the petitions, since the respondents issued the impugned notification dated 13.01.2017, nothing further survived in the said writ petitions and the same got disposed of with liberty to challenge the subsequent developments leading to the filing of the present writ petitions.

4. Contention of the counsel for the petitioners is that the cancellation of advertisement is per se illegal as there was no substantial material available for the University authority to cancel the recruitment process which had already attained finality from the stage of being approved by the Executive Council of the University. Further contention of the counsel for the petitioners is that the entire decision which led to the issuance of Annexure P-1 is the differences that were prevailing between the Registrar and the Vice-Chancellor of the University for which the career of the petitioners should not be jeopardised. Even otherwise, the recruitment process could not have cancelled as there was no allegation of any malpractice neither was there any allegation of favouritism and nepotism

adopted while considering the candidature of the petitioners. According to the petitioners, since they had participated in the selection process and found suitable and their candidature was also recommended by the Selection Committee which in due course was also approved and ratified by the Executive Council, some right is created in their favour by virtue of which they intend to seek interference of this Court. Counsel for the petitioners referred to the following judgments in support of their contention:

- i) (2003) 7 SCC 285, Union of India and others v. Rajesh P.U., Puthuvalnikathu and another
- ii) (2006) 11 SCC 356, Inderpreet Singh Kahlon and others v. State of Punjab and others
- iii) (2010) 7 SCC 678, East Coast Railway & Anr. vs. Mahadev Appa Rao & Ors.
- iv) (2013) 16 SCC 771, Mahipal Singh Tomar v. State of Uttar Pradesh and others
- v) (2014) 6 SCC 644, Joginder Pal and others v. State of Punjab and others

5. Per contra, counsel appearing for the University vehemently opposing the petition submits that no substantive right whatsoever stand created in favour of the petitioners for issuance of a writ. Merely because the petitioners were found suitable in the selection process by itself does not give rise to an indefeasible right in their favour. Contention of the counsel for the University is that unless and until the order of appointment is issued in favour of the petitioner, no right whatsoever exists in their favour.

6. Counsel for the University further argued that the present writ petitions in the present form have now become infructuous in the light of

fresh advertisement which has been published by the University on 10.05.2018 wherein all those posts which were advertised earlier have again been advertised for an altogether fresh recruitment to be conducted. Thus prayed for rejection of the writ petitions on this ground.

7. Having heard the contentions put forth on either side and on perusal of the record what undisputedly comes before the Court is that the two petitioners had applied for the post of Assistant Professor in computer application and social work respectively published vide advertisement dated 28.05.2013. The petitioners were found to be suitable. However, the recruitment process could not be completed for some reason or the other. In between, there were great differences between the Registrar and the Vice-Chancellor of the University and there were allegations of the procedure not having been properly followed in the course of recruitment process. Finally vide impugned order dated 13.01.2017 the entire recruitment process was cancelled. Another undisputed fact which has now been brought before this Court is the fresh advertisement issued on 10.05.2018 wherein all these posts have been advertised for fresh recruitment altogether.

8. So far as the right of the petitioners is concerned, it is by now well settled position of law by a series of decisions that merely empanelment of a candidate in a select list confers no right in his favour for appointment on account of being so empanelled. It also does not create an indefeasible right for appointment in favour of the candidate. If we consider the facts in the instant case, it would reflect that the recruitment process or the advertisement in which the petitioners had applied was of the year 2013 and for some reason the recruitment process could not be completed. Admittedly, there were some between the officers of the University on the issue of recruitment process and there were also allegations and counter

allegations made so far as the procedure applied in the recruitment process. Down the line now if the respondents have cancelled the earlier recruitment process and decided to go for a fresh recruitment by way of a fresh advertisement published on 10.05.2018, the interest of the petitioner does not get adversely affected and they can still participate in the fresh recruitment process. Another fact which also has to be considered is that the lapse of time of about 5 years is also a strong ground for going with a fresh recruitment as there is all possibility that many more candidates in between becoming eligible for participating the recruitment process and it could also be a case where the University may get better candidates for the said post. It would give an opportunity to all those persons who during the intervening period became eligible for the different posts advertised by the University.

9. So far as the contents of the impugned order is concerned, if we go through the contents of the impugned order, it clearly reflects that the authorities concerned have subsequently found that due procedure of the rules and guidelines were not followed and proper financial approval was not obtained, therefore, the entire recruitment process has been cancelled. This by itself means that the respondent authorities have not unilaterally cancelled the appointment but they found certain material available with them on the basis of which the impugned order has been passed. Now that fresh advertisement has been issued the petitioners also have a right to participate in the said recruitment process.

10. In the case of **Kulwinder Pal Singh and Another v. State of Punjab and others** reported in **(2016) 6 SCC 532** the Supreme Court in paragraphs-10, 11 & 12 has held as under:

“10. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a

candidate may appear in the merit list but he has no indefeasible right to an appointment (vide Food Corporation of India v. Bhanu Lodh (2005) 3 SCC 618; All India SC & ST Employees' Association & Anr. v. A. Arthur Jeen (2001) 6 SCC 380 and UPSC v. Gaurav Dwivedi (1999) 5 SCC 180.

11. This Court again in State of Orissa v. Rajkishore Nanda (2010) 6 SCC 777, held as under:

“14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required...”

12. In Manoj Manu v. Union of India 2013 (10) SCALE 204: (2013) 12 SCC 171, it was held that merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the court would not issue any mandamus to government to fill up the vacancies.”

Earlier a similar view has also been taken by the Supreme Court in the case of U.P. Bhumi Sudhar Nigam Ltd. Vs. Shiv Narain Gupta reported in 1994 Supp (2) SCC 541.

11. Keeping in view the aforesaid principle of law laid down by the Hon'ble Supreme Court if we take into consideration the judgments which have been cited by the counsel for the petitioners referred in paragraph-4 of this judgment, one would find that the facts and background of each of the cases under which those judgments were decided are apparently quite different from the facts in hand. In the instant case, it is the cancellation of the entire selection process which was initiated at one point of time and thereafter, the respondents have also issued advertisement for fresh

recruitment by which all those eligible candidates including the petitioners can still participate in the recruitment process. Therefore, the principles of law laid down in those judgments cannot be applied in the instant case.

12. For the aforesaid reasons, more particularly the fresh recruitment having been issued by the University wherein the petitioners also would have an opportunity of participating in the recruitment process, this Court does not find any merit in the claim put forth by the petitioners. Thus, both the petitions deserve to be and are accordingly dismissed.

**Sd/-
(P. Sam Koshy)
Judge**